

July 15, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

AMENDING THE SAN DIEGO CITY CHARTER REGARDING
PROVISIONS FOR FILLING CITY COUNCIL VACANCIES

Issue

Should a City Charter amendment be drafted for Council consideration for placement before the voters that would modify the manner in which Council vacancies are filled?

Recommendations

Approve, in concept, a Charter amendment proposal that would:

- . Provide that a candidate elected to fill a Council vacancy shall serve the remainder of the unexpired term, and;
- . If the vacancy occurs with more than two (2) years remaining in the term, require a run-off election should no candidate in the special election receive a majority of the votes cast, and;
- . If the vacancy occurs with less than two (2) years remaining in the term, require the vacancy to be filled by a single special election with the candidate receiving the greatest number of votes (plurality), and;
- . Extend to 180 days before the regularly scheduled election for the vacated Council seat the City Council's option to appoint to fill a Council vacancy, and;
- . Direct the City Attorney to draft the necessary amendments to the Charter and return to Council with a proposal for consideration for placement on the June 7, 1994 ballot, and;
- . Direct the City Attorney and City

Clerk to investigate and report back to Council on the legal and practical issues involved in accelerating the timing of a required run-off election.

Alternatives

1. Do not change procedure for filling Council vacancies.
2. Do not require a run-off election if the vacancy occurs with more than two (2) years remaining in the term (allowing election to fill unexpired term by plurality).
3. Delete current requirement of running for election at the next regular municipal election.
4. Change the time period in which the City Council has the option of filling the vacancy by appointment.

Background

On June 28, 1993, the Rules Committee directed the City Attorney to draft a ballot proposal to amend the City Charter to modify the manner in which Council vacancies are filled. Charter section 12, which provides for the filling of vacancies, is attached as Exhibit 1.

Specifically, Committee members expressed interest in two changes. The first eliminates the current Charter provision that a candidate elected in a special election shall serve only until the next regular municipal election. The second change would add language requiring a run-off election should no candidate receive a majority of votes cast in the special election.

Also, staff was directed to investigate how quickly after the election could a special run-off election be conducted, in order to reduce, as much as possible, the period in which the Council District goes unrepresented.

Discussion

In analyzing the Charter amendments proposed by the Rules Committee, the City Attorney, in consultation with the City Clerk, identified several potential impacts we believe should be brought to your attention for policy direction before drafting the actual Charter amendment language. They are:

- . Requiring a run-off election, particularly if the vacancy occurs late in the term, could result in the City being forced to conduct, and candidates forced to endure, as many as four elections for the same Council seat within months of one another. One solution, included in our recommendation, is to require a

run-off election only if the vacancy occurs with more than two years left in the term. Should the vacancy occur with less than two years remaining in the term, the candidate receiving the greatest number of votes in the special election shall be deemed the winner. In either case, the elected candidate shall serve the remainder of the unexpired term.

- . Current language in the City Charter gives the City Council the option to appoint to fill the vacancy, should the vacancy occur within 100 days of the regularly scheduled election for that Council seat. This 100-day period is inadequate to prevent elections for the same seat occurring within weeks of one another. A special election, for example, takes approximately 90 days to conduct, from date of vacancy to swearing-in. Under the existing Charter provision, should a vacancy occur on the 101st day before the regular election for that seat, the Council is required to call a special election on a date approximately 11-18 days before the regular election. We would suggest extending the time period for an appointment to 180 days which, under the most adverse scenario, would still give a victorious candidate in a special election a minimum of at least three months in office before the next election.
- . We were asked to investigate how quickly a run-off election could be conducted following a special election. The normal period between a regular Council primary and a run-off election, as set by the Charter, ranges between 42-49 days depending on the year of the election. For a

special election, some tightening of the schedule is possible, however, significantly reducing the period between the two elections impacts the ability to produce, proof and distribute sample ballots. This may result in disenfranchising certain voters, particularly those who request and vote absentee ballots, thus jeopardizing the integrity of the election. Preliminary discussions with the County Registrar of Voters and the Secretary of State's legal division raised additional issues regarding voter rights under the California Elections Code, however, as a charter city, we may have some additional latitude in this area. Given the importance of this issue, we would recommend allowing for a more deliberate and thorough investigation into the possibilities before deciding to incorporate an accelerated run-off election schedule into the Charter provisions.

Costs

The estimated cost of conducting a special election is approximately \$150,000 to \$200,000, depending on the number of registered voters in the Council District. The cost of a subsequent run-off election would be comparable, but slightly less due to the reduced printing costs of the smaller sample ballot.

Under the current Charter provisions, a vacancy is filled by a single special election. Should that election occur in the first two (2) years of the term, however, the victorious candidate serves only until the next municipal election, requiring a least one (1), and maybe two (2), additional special elections in order to serve the remaining two (2) years of the unexpired term. The cost for each of these additional two (2) special elections, since they are held in conjunction with the regular municipal elections, is estimated at \$90,000 to \$120,000. Assuming the need for a run-off, then, the City could expect total costs for the three (3) special elections needed to elect a representative(s) to complete the unexpired term of about

\$330,000 to \$440,000, depending on the District involved.

In comparison, under the provisions being recommended in this report, should the vacancy occur with more than two (2) years remaining in the term, and, again, assuming the need for a run-off election -- this time immediately following the special election -- only two (2) elections would be needed to elect a representative to complete the expired term, at an estimated total cost of \$300,000 to \$400,000, a ten (10) percent savings. Another option (listed as Alternative #5 in the report) would maintain the existing requirement of a single election, with no run-off, and allowing the victorious candidate to serve the remainder of the unexpired term regardless of when the vacancy occurs. Total cost: \$150,000 to \$200,000.

Conclusion

The City Charter currently provides that a candidate elected in a special election to fill a Council vacancy shall serve only until the next regular municipal election, rather than for the remainder of the unexpired term. This may result in the City being forced to conduct up to three (3) special elections for the same Council seat within the span of a few months.

Staff has presented a series of recommendations for your consideration to improve this procedure, and requests further policy direction before proceeding with drafting the necessary changes to the Charter.

Respectfully submitted,

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City Attorney

CHARLES G. ABDELNOUR

City Clerk

KKS:MDH:js(043.1)

Attachment - Exhibit 1

RC-93-35

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